



# Wyoming Department of Agriculture

2219 Carey Ave., Cheyenne, WY 82002 ■ Phone: 307-777-7321 ■ Fax: 307-777-6593  
E-mail: [wda1.state.wy.us](mailto:wda1.state.wy.us) ■ Website: [wyagric.state.wy.us](http://wyagric.state.wy.us)

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June 24, 2004

Angela C. Snyder  
Office of the Deputy Administrator  
Poultry Programs  
Agricultural Marketing Service (AMS) USDA  
1400 Independence Avenue, SW  
STOP 0256, Room 3932-South  
Washington D.C. 20250

Dear Ms. Snyder:

Following are our comments on the Proposed Rule to Exempt Organic Producers from Assessment by Research and Promotion Programs (7 CFR Parts 1150, 1160, et al).

Our comments are specific to our mission within state government which is to be dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources, and quality of life. As this proposed rule affects our agriculture industry, our natural resources, and the welfare of our citizens, we believe it's important that we be kept informed of proposed actions and decisions and that we continue to be provided the opportunity to express pertinent issues and concerns during any ensuing periods of public comment.

The proposed rule must strictly specify and define those who qualify for the organic exemption. We realize the 2002 Farm Bill included provisions that "exempts any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or nonorganic products, from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502)." However, to be fair to both certified organic producers and those who support commodity promotion assessments, the proposed rule must more strictly and accurately define those who qualify and do not qualify for the exemption. These more exacting terms are necessary to meet the intent of the provisions of the 2002 Farm Bill.

Thus, we recommend the following.

We are concerned about the expansion of the exemption to include importers who process imported commodities. This expansion to include processing activities violates the intent of the Farm Bill 2002 provision to exempt producers who "produce and market" 100 percent organic products. As written, the proposed rule appears to illegally expand the application of the exemption to persons who were not intended to receive this benefit. The proposed rule needs to be rewritten to follow the intent of the Farm Bill 2002 provisions and delete provisions for processing activities after importation.

The proposed rule, as currently written, may allow producers or importers who produce both organic and conventional products to use the exemption to circumvent payment of assessments. Producers or importers who deal in both organic and nonorganic products could create a subsidiary that handles only 100 percent organic products. The subsidiary may qualify for the exemption, under the guidelines of the proposed rule. Again, this qualification would violate the intent of the exemption, as specified in the Farm Bill 2002 provisions. This loophole needs to be eliminated.

The proposed rule should include a requirement to maintain exemption records for a term that is consistent with the term required for keeping records for compliance audits. This consistency would benefit all involved in exemption tracking.

The requirement for boards or designees to grant exemptions and issue a Certificate of Exemption within 30 days may not provide adequate time to process the request, especially if the presentation of added material is needed. We recommend the consideration of a processing time of 60 days.

We also believe the proposed rule should be modified so that those producers or importers who are denied the exemption are timely notified in writing by the appropriate board or designee.

We are concerned about the possible misuse of the provision in the proposed rule that says "producers shall provide a copy of the Certificate of Exemption to each person responsible for collecting and remitting the assessment." This provision, as written, may allow those not eligible for the exemption to use it. The proposed rule needs to be rewritten to minimize the opportunities for this abuse to occur. For example, abuse would be minimized if a form had to be filled out at the time of each transaction.

The proposed rule needs to specify that the exemption applies to the producer, handler, or importer, and not the specific commodity.

We also recommend that the proposed rule be rewritten so that reporting procedures are specified for producers and collecting points. The procedures need not be onerous, but they need to ensure that organic and nonorganic commodities are not mixed and that only certified organic commodities are subject to the exemption.

We appreciate the opportunity to comment.

**received**  
6-25-04

Sincerely,



John Etchepare  
Director